

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0393-LII-E TCEQ ID: RN104787213 CASE NO.: 32979
RESPONDENT NAME: EVANS WEAVER

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION OCCURRED: 1708 Acacia Bud Drive, Austin, Travis County</p> <p>TYPE OF OPERATION: landscape business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent contracted to sell irrigation services and is not a licensed irrigator. There is no record of additional pending enforcement actions regarding this location.</p> <p>INTERESTED PARTIES: One complaint was received but the Complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired April 20, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Air Enforcement Section, MC R-4, (817) 588-5886</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929</p> <p style="margin-left: 20px;">Respondent: Mr. Evans Weaver, P.O. Box 50070, Austin, Texas 78763</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: October 31, 2005</p> <p>Date of Investigation Relating to this Case: February 7, 2007</p> <p>Date of NOE Relating to this Case: February 27, 2007</p> <p>Background Facts: The EDPRP was filed October 15, 2007. Settlement was achieved and an Agreed Order was signed September 19, 2008.</p> <p>Current Compliance Status: The Respondent has not obtained an irrigator license.</p> <p>LII: Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, including the connection of such system to any water supply [30 TEX. ADMIN. CODE §§ 30.5 and 344.4(a) (now 344.30(a)), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p>Total Assessed: \$625</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$625</p> <p>The Respondent paid the administrative penalty in full.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until the required TCEQ irrigator license is obtained. 2. Within 15 days, submit written certification demonstrating compliance with Ordering Provision No.1. above.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	5-Mar-2007	Screening	14-Mar-2007	EPA Due	
	PCW	3-Oct-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Evans Weaver		
Reg. Ent. Ref. No.	RN104787213		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32979	No. of Violations	1	
Docket No.	2007-0393-LII-E	Order Type	1660	
Media Program(s)	All Occupational Licenses	Enf. Coordinator	Cheryl Thompson	
Multi-Media		EC's Team	EnforcementTeam 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$625

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0Notes No change due to no previous compliance history.Culpability No 0% Enhancement Subtotal 4 \$0Notes The respondent does not meet the culpability criteria.Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts	\$19
Approx. Cost of Compliance	\$570

 0% Enhancement* Subtotal 6 \$0

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$625OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Final Penalty Amount \$625

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$625DEFERRAL Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended due to settlement termination.

PAYABLE PENALTY

 \$625

Screening Date 14-Mar-2007

Docket No. 2007-0393-LII-E

PCW

Respondent Evans Weaver

Policy Revision 2 (September 2002)

Case ID No. 32979

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104787213

Media [Statute] All Occupational Licenses

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 14-Mar-2007

Docket No. 2007-0393-LII-E

PCW

Respondent Evans Weaver

Policy Revision 2 (September 2002)

Case ID No. 32979

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104787213

Media [Statute] All Occupational Licenses

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 344.4(a), Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251

Violation Description

Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, including the connection of such system to any water supply. Specifically, the respondent performed irrigation repair work at the site located at 1708 Acacia Bud Drive, Austin, Travis County without a license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have a valid irrigator license prior to repairing an irrigation system could result in human health or the environment being exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$1,875

\$625

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$625

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$625

This violation Final Assessed Penalty (adjusted for limits) \$625

Economic Benefit Worksheet

Respondent Evans Weaver
Case ID No. 32979
Reg. Ent. Reference No. RN104787213
Media All Occupational Licenses
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$570	27-Feb-2007	31-Oct-2007	0.7	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost of obtaining the required license before repairing a landscape irrigation system. Date required is the date of record review. Final date is projected date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$570

TOTAL

\$19

Compliance History

Customer/Respondent/Owner-Operator:	CN602934242	WEAVER, EVANS	Classification:	Rating:
Regulated Entity:	RN104787213	WEAVER EVANS	Classification:	Site Rating:
ID Number(s):				
Location:	PO BOX 50070, AUSTIN, TX, 78763			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 21, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 21, 2002 to March 21, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson	Phone:	(817)588-5886	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track, No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track, No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EVANS WEAVER;
RN104787213

§
§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-0393-LII-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Evans Weaver ("Mr. Weaver") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCC. CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Weaver, appear before the Commission and together stipulate that:

1. Mr. Weaver owns and operates a Landscape business located at 4819 G Capitol of Texas Highway, Austin, Travis County, Texas (the "Business").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 37.003 because it alleges violations of TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37 and the TCEQ rules.
3. The Commission and Mr. Weaver agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Weaver is subject to the Commission's jurisdiction.
4. Mr. Weaver received notice of the violation alleged in Section II ("Allegations") on or about March 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Weaver of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Weaver has paid six hundred twenty-five dollars (\$625.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Weaver have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Weaver has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Mr. Weaver is alleged to have violated TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a) by failing to hold a current TCEQ irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the connection of such system to any water supply. Specifically, Mr. Weaver performed irrigation repair work at the site located at 1708 Acacia Bud Drive, Austin, Travis County, Texas without a license, as documented during a records review conducted on February 7, 2007.

III. DENIALS

Mr. Weaver generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Weaver pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Weaver's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Evans Weaver, Docket No. 2007-0393-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Weaver shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Weaver shall cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until the required TCEQ irrigator license is obtained, in accordance with the requirements of TEX. OCC. CODE ch. 1903.
 - b. Within 15 days after the effective date of this Agreed Order, Mr. Weaver shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Robert Mann, Regulatory Compliance Section Manager
Compliance Support Division, MC 178
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Weaver. Mr. Weaver is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Business operations referenced in this Agreed Order.
4. If Mr. Weaver fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Weaver's failure to comply is not a violation of this Agreed Order. Mr. Weaver shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Weaver shall notify the Executive Director within seven days after Mr. Weaver becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Weaver shall be made in writing to the Executive Director. Extensions are not effective until Mr. Weaver receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Weaver in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be

transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.


8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Weaver, or three days after the date on which the Commission mails notice of the Order to Mr. Weaver, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Evans Weaver
Docket NO. 2007-0393-LII-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

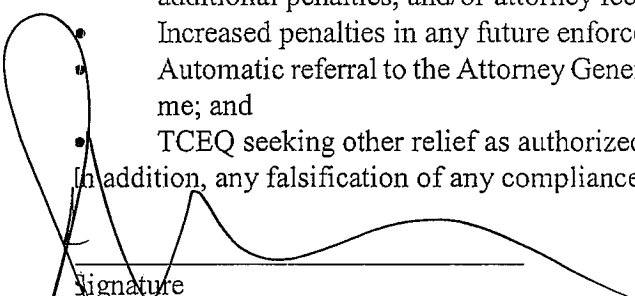
3/16/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

Evans Weaver

Name (Printed or typed)

Evans Weaver

Date

9/19/08
Title